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11 2006-1

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA - SACRAMENTO DIVISION

In re

RANA DOMOMDON,
Debtor(s).

Case No. 10-25809-A-13L

Chapter 7

D.C. No. PD-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF
(11 U.S.C. § 362 and Bankruptcy Rule 4001)

US BANK NA, AS TRUSTEE FOR THE
BNC MORTGAGE LOAN TRUST 2006-1,

Movant,
vs.

RANA DOMOMDON, Debtor(s); SUSAN K.
SMITH, Chapter 7 Trustee,

Respondents.

LBR 4001-1 and 9014-1(f)(1)

DATE: July 22, 2010
TIME: 9:30 a.m.
CTRM: 33

501 "I" Street
Sacramento, CA 95814

US Bank NA, as Trustee for the BNC Mortgage Loan Trust 2006-1¹ ("Movant"), moves this court

¹ This Motion for Relief from Automatic Stay shall not constitute a waiver of the within party's right to

1 for an order terminating the automatic stay of 11 U.S.C. § 362 as to Movant, so that Movant may
2 commence and continue all acts necessary to enforce its security interest in real property generally
3 described as 169 Fleming Avenue, Vallejo, California 94590.

4 On or about March 10, 2010, Rana Domomdon ("Debtor") filed a voluntary petition under
5 Chapter 13 of the Bankruptcy Code. On or about April 27, 2010, said case was converted to one
6 under Chapter 7 of the Bankruptcy Code and Susan K. Smith was appointed as Chapter 7 Trustee.
7 As a result of said filing, certain acts and proceedings against Debtor and the bankruptcy estate are
8 stayed as provided in 11 U.S.C. § 362.

9 Movant moves this court for relief from stay under 11 U.S.C. §§ 362(d)(1) and 362(d)(2).

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I.**

12 **MOVANT IS ENTITLED TO RELIEF FROM THE**
AUTOMATIC STAY UNDER 11 U.S.C. § 362(d)(2).

13 **NO EQUITY**

14 11 U.S.C. § 362(d)(2) provides that relief from the automatic stay shall be granted if the
15 debtor does not have any equity in the property and the property is not necessary to the debtor's
16 effective reorganization.

17 In In re San Clemente Estates, 5 B.R. 605 (Bankr. S.D. Cal. 1980), the court stated that:

18 § 362(d)(2) reflects congressional intent to allow creditors to
immediately proceed against the property where the debtor has no
19 equity and it is unnecessary to the reorganization, even where the
debtor can provide adequate protection under § 362(d)(1). (Emphasis
added).

20 Id. at 610 (emphasis added).

21
22 In In re Mikole Developers, Inc., 14 B.R. 524, 525 (Bankr. E.D. Pa. 1981), the court stated
23 that in determining whether equity exists in the property for purposes of § 362(d)(2), all
24 encumbrances are totaled, whether or not all the lienholders have joined in the request for relief from
25 stay. The Ninth Circuit has concurred with this view in Stewart v. Gurley, 745 F.2d 1194 (9th Cir.
26 1984).

27
28 receive service pursuant to Fed. R. Civ. P. 4, made applicable to this proceeding by Fed. R. Bankr. P. 7004,
notwithstanding Pite Duncan, LLP's participation in this proceeding. Moreover, the within party does not authorize
Pite Duncan, LLP, either expressly or impliedly through Pite Duncan, LLP's participation in this proceeding, to act
as its agent for purposes of service under Fed. R. Bankr. P. 7004.

1 An appropriate cost of sale factor should also be added to determine if the debtor has any
2 equity in the property. La Jolla Mortgage Fund v. Rancho El Cajon Associates, 18 B.R. 283, 289
3 (Bankr. S.D. Cal. 1982).

4 On or about July 13, 2006, Debtor, for valuable consideration, made, executed and delivered
5 to BNC Mortgage, Inc. ("Lender") a Note in the principal sum of \$375,000.00 (the "Note").
6 Pursuant to the Note, Debtor is obligated to make monthly principal and interest payments
7 commencing September 1, 2006, and continuing until August 1, 2036, when all outstanding amounts
8 are due and payable. The Note provides that, in the event of default, the holder of the Note has the
9 option of declaring all unpaid sums immediately due and payable. A true and correct copy of the
10 Note is attached to the concurrently served and filed Exhibits to the Declaration in Support of
11 Motion for Relief From Automatic Stay ("Exhibits") as exhibit A and incorporated herein by
12 reference.

13 On or about July 13, 2006, the Debtor made, executed and delivered to Lender a Deed of
14 Trust (the "Deed of Trust") granting Lender a security interest in real property commonly described
15 as 169 Fleming Avenue, Vallejo, California 94590 (the "Real Property"), which is more fully
16 described in the Deed of Trust. The Deed of Trust provides that attorneys' fees and costs incurred as
17 a result of the Debtor's bankruptcy case may be included in the outstanding balance under the Note.
18 The Deed of Trust was recorded on July 28, 2006, in the Official Records of Solano County, State of
19 California. A true and correct copy of the Deed of Trust is attached to the Exhibits as exhibit B and
20 incorporated herein by reference.

21 Subsequently, Lender's beneficial interest in the Deed of Trust was sold, assigned and
22 transferred to Movant. A true and correct copy of the Corporation Assignment of Deed of Trust
23 evidencing the Assignment of the Deed of Trust to Movant is attached to the Exhibits as exhibit C
24 and incorporated herein by reference.

25 The obligation under the Note is in default as of January 1, 2009, for failure to make
26 payments to Movant. As of May 6, 2010, the total obligation due and owing under the Note is in the
27 approximate amount of \$439,715.12, representing the principal balance of \$371,731.43, interest in
28 the sum of \$48,476.09, accumulated late charges in the amount of \$1,450.40, escrow advances in the

1 amount of \$14,953.16, recoverable balance of \$3,087.79, and other fees of \$16.25. This is an
2 approximate amount for purposes of this Motion only, and should not be relied upon as such to pay
3 off the subject loan as interest and additional advances may come due subsequent to the filing of the
4 Motion. An exact payoff amount can be obtained by contacting Movant's counsel. Further, Movant
5 has incurred additional post-petition attorneys' fees and costs in bringing the instant Motion.
6 Moreover, the total arrears under the Note are in the approximate sum of \$66,626.23, excluding the
7 post-petition attorneys' fees and costs incurred in filing the instant Motion.

8 As a result of the default under the Note, a Notice of Default was recorded on May 5, 2009.
9 Further, a Notice of Sale was recorded on August 10, 2009, and the foreclosure sale is scheduled for
10 May 24, 2010.

11 **II.**

12 **RELIEF FROM STAY**

13 **LACK OF EQUITY**

14 Movant is informed and believes that, based on a Broker's Price Opinion, the fair market
15 value of the Property as of May 17, 2010 is approximately \$221,900.00. A true and correct copy of
16 the Broker's Price Opinion is attached to the Exhibits as exhibit D and incorporated herein by
17 reference.

18 Based on the above, Movant maintains that the equity in the Property is as follows:

Fair Market Value:	\$221,900.00
Less:	
Movant's Trust Deed	\$439,715.12
Costs of Sale (8%)	\$17,752.00
Equity in the Property:	\$235,567.12

23 As a result, there is little to no equity in the Property for the bankruptcy estate. Moreover,
24 since this is a Chapter 7 proceeding, there is no reorganization in prospect. As a result, Movant is
25 entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2).

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III.
MOVANT IS ENTITLED TO RELIEF FROM THE
AUTOMATIC STAY UNDER 11 U.S.C. § 362(d)(1).

CAUSE - LACK OF ADEQUATE PROTECTION

Pursuant to the provisions of 11 U.S.C. §§ 361 and 362(d)(1), Movant is entitled to adequate protection of its interest in the Property.

Movant submits that adequate protection in this case requires normal and periodic cash payments, as called for by the Note, plus the repayment of any and all delinquent amounts owed to Movant, including all attorneys' fees and costs incurred in the filing of this motion.

Movant is informed and believes that Debtor is presently unwilling or unable to provide adequate protection to the Movant and there is no probability that adequate protection can be afforded to Movant within a reasonable time.

By reason of the foregoing, Movant is entitled to relief from stay under 11 U.S.C. § 362(d)(1), based upon the failure of Debtor to provide adequate protection to Movant.

WHEREFORE, Movant respectfully prays for an Order of this court as follows:

1. Terminating the automatic stay of 11 U.S.C. § 362, as it applies to the enforcement by Movant of all of its rights in the Real Property under the Note and the Deed of Trust;

2. That the 14-day stay described by Bankruptcy Rule 4001(a)(3) be waived;

3. Granting Movant leave to foreclose on the Real Property and to enforce the security interest under the Note and the Deed of Trust, including any action necessary to obtain possession of the Property;

4. Permitting Movant to offer and provide Debtor with information re: a potential Forbearance Agreement, Loan Modification, Refinance Agreement, or other Loan Workout/Loss Mitigation Agreement, and to enter into such agreement with Debtor;

5. Alternatively, in the event this court declines to grant Movant the relief requested above, Movant requests that an Order for adequate protection be issued, requiring the Debtor to reinstate and maintain in a current condition all obligations due under the Note and Deed of Trust and all other deeds of trust encumbering the Real Property, including Debtor's obligations to pay

1 when due (a) the monthly installments of principal and interest, as required under the Note;
2 (b) tax/insurance obligations; and (c) any sums advanced by Movant on behalf of Debtor in order to
3 protect Movant's interest in the Real Property, including all attorneys' fees and costs incurred in the
4 filing of this motion;

5 6. That the attorneys' fees and costs incurred by Movant for filing the instant Motion be
6 included in the outstanding balance of the Note as allowed under applicable non-bankruptcy law;
7 and

8 | 7. For such other and further relief as the court deems just and proper.

9 | Dated: June 9, 2010 PITE DUNCAN, LLP

/s/ANNE W. HAMANN (CA SBN 254327)

ANNE W. HAMANN

Attorneys for US BANK NA, AS TRUSTEE FOR
THE BNC MORTGAGE LOAN TRUST 2006-1